

Message Text

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ACTION EUR-12

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TO SECSTATE WASHDC 2358

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AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO BRUSSELS

USMISSION EC BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 03 BONN 13788

E.O. 11652: GDS

TAGS: PFOR, PGOV, WB, EC, GW, US, UK, FR, UR

SUBJECT: BERLIN AND THE EUROPEAN COMMUNITY

REFS: A) BONN 11840

B) BONN A-320

C) USBERLIN 1443

D) USBERLIN A-104

E) USBERLIN 1160

BEGIN SUMMARY. AS A FOLLOW-ON STEP TO BONN GROUP DIS-
CUSSION OF THE EXTENSION OF EC TREATIES AND REGULATIONS
TO BERLIN, THE FRENCH REP HAS SUBMITTED FOR TRIPARTITE
CONSIDERATION A DRAFT BK/L WHICH WOULD MODIFY THE
ORIGINAL ALLIED LEGISLATION APPROVING THE EXTENSION TO
BERLIN OF THE TREATY OF ROME. IN LINE WITH THE STUDY
OF THE ALLIED KOMMANDATURA LEGAL COMMITTEE, THE PRO-
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POSED BK/L WOULD REQUIRE THE FRG AND THE SENAT TO TAKE

SPECIAL STEPS TO ASSURE TIMELY AK AWARENESS AND CONSIDERATION OF EC ACTIONS, INCLUDING THE NEGOTIATION OF TREATIES, WHICH MIGHT HAVE IMPLICATIONS FOR THE STATUS OF BERLIN. THE TEXT OF THE DRAFT BK/L IS BEING REPORTED SEPTEL.

WHILE AGREEING IN PRELIMINARY TRIPARTITE DISCUSSION THAT SUCH A BK/L MIGHT BE USEFUL FOR DEALING WITH ONE ASPECT OF THE PROBLEM, THE US REP SUGGESTED THE NEED FOR FULLER DISCUSSION OF THE BERLIN-EC RELATIONSHIP IN ITS ENTIRETY. SUCH DISCUSSION SHOULD AIM IN THE FIRST INSTANCE AT ACHIEVING AN ALLIED POSITION ON ISSUES ASSOCIATED WITH THE EUROPEAN PARLIAMENT. THE EMBASSY DISAGREES WITH SOME OF THE CONCLUSIONS OF REFS C AND D, WHICH SUGGEST THAT THE EC IS STILL TOO FAR AWAY FROM POLITICAL UNION TO POSE IMMEDIATE PROBLEMS FOR THE STATUS OF BERLIN AND, IN OUR VIEW, UNDERESTIMATE THE LIKELIHOOD OF FUTURE CONFRONTATIONS WITH THE SOVIETS OVER EC-RELATED ISSUES. END SUMMARY.

1. IN THE DISCUSSION FOLLOWING THE FRG PRESENTATION IN THE BONN GROUP ON JULY 16, REPORTED IN REF A, THE FRENCH REP (BOISSIEU) UNDERTOOK TO DRAFT A PAPER WHICH WOULD SEEK TO DEFINE THE ISSUES AS A MEANS OF FOCUSING FUTURE DISCUSSIONS. IN SUBSEQUENT TRIPARTITE DISCUSSIONS, HOWEVER, BOISSIEU SUGGESTED THAT FURTHER BONN GROUP DISCUSSION WOULD BE USELESS UNTIL THE ALLIES THEMSELVES HAD DECIDED WHETHER CORRECTIVE MEASURES WERE NEEDED AND, IF SO, WHAT KIND. THE UK REP (CROMARTIE) AGREED THAT, SINCE THE FRG HAD RATHER FORMALLY PRESENTED ITS VIEWS THAT NO CHANGES WERE REQUIRED IN PRESENT PROCEDURES FOR THE APPLICATION TO BERLIN OF EC TREATIES AND REGULATIONS, IT WOULD NOW BE NECESSARY TO RETURN TO THE SUBJECT WITH A COMPARABLE FORMAL STATEMENT OF ALLIED VIEWS IF WE BELIEVED THAT CHANGES SHOULD BE MADE.

2. BOISSIEU HAS SUBMITTED FOR TRIPARTITE CONSIDERATION A DRAFT BK/L WHICH WOULD AMEND BK/L (57)44, THE LEGISLATION WHICH AUTHORIZED THE EXTENSION TO BERLIN OF THE TREATY OF ROME AND PROVIDED THAT "EUROPEAN REGULA-

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TIONS" MIGHT BE APPLIED TO BERLIN UNDER THE SAME CONDITIONS AS REGULATIONS ISSUED UNDER FEDERAL LEGISLATION. INSPIRED, APPARENTLY, BY THE STUDY BY THE AK LEGAL COMMITTEE REPORTED IN REF D, THE FRENCH DRAFT WOULD LEAVE UNCHANGED THE CURRENT PROCEDURES FOR HANDLING ORDINARY "EUROPEAN REGULATIONS" -- THOSE IMPLEMENTING MEASURES WHICH WERE EXPRESSLY DELEGATED TO COMMUNITY INSTITUTIONS BY THE TREATY OF ROME. IT WOULD, HOWEVER,

PLACE A BURDEN ON THE FRG AND THE SENAT TO TAKE TIME-
LY MEASURES TO BRING TO THE ATTENTION OF THE ALLIES
THOSE ACTS OF THE COMMUNITY MENTIONED IN THE LEGAL
COMMITTEE STUDY AS HAVING SPECIAL SIGNIFICANCE FOR
BERLIN OR AS POTENTIALLY AFFECTING MATTERS
OF STATUS -- REGULATIONS ISSUED ON THE STRENGTH OF
ARTICLE 235 OF THE TREATY (THE ARTICLE WHICH WAS USED
TO IMPLEMENT THE EC DECISION TO ESTABLISH THE VOCATIONAL

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INFO USMISSION USBERLIN

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TRAINING CENTER IN BERLIN), AND AGREEMENTS BETWEEN THE
EC AND THIRD STATES OR INTERNATIONAL ORGANIZATIONS.
THE TEXT OF THE DRAFT BK/L FOLLOWS SEPTTEL.

3. IN PRELIMINARY DISCUSSION OF THE FRENCH PROPOSAL,

THE UK AND US REPS HAVE AGREED THAT IT IS A WORTHWHILE INITIATIVE WHICH WILL RECEIVE CAREFUL STUDY. THE US REP NOTED, HOWEVER, THAT SUCH A BK/L WOULD DEAL WITH ONLY ONE ASPECT OF THE BERLIN-EC PROBLEM. HE RECALLED THAT OUR REPLY TO THE SOVIET PROTEST OF JUNE 11 (REF E) DID NOT COME TO GRIPS WITH THE BASIC SOVIET POSITION, WHICH WAS TO REJECT OUTRIGHT THE ALLIED CLAIM THAT, BY SIGNING THE QUADRIPARTITE AGREEMENT, THE SOVIET UNION HAD APPROVED THE INCLUSION OF WEST BERLIN IN THE AREA OF APPLICABILITY OF THE EC TREATIES. THAT PROTEST HAD CONFIDENTIAL

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FURTHER IMPLIED THAT THE QA, RATHER THAN CONFIRMING THE STATUS QUO, REQUIRED THAT BERLIN BE TAKEN OUT OF THE EC AREA. HE THOUGHT THAT, SOONER OR LATER, WE WOULD PROBABLY BE FORCED TO TACKLE THIS SOVIET ARGUMENT ON ITS MERITS.

4. BOISSIEU AND CROMARTIE BOTH AGREED ON THE NEED FOR STUDY OF OTHER ASPECTS OF THE EC RELATIONSHIP AND ON THE DESIRABILITY OF MOVING AHEAD WITH AN ATTEMPT TO DEVELOP OUR OWN VIEWS ON THE MOST PRESSING ISSUE ON THE HORIZON, DIRECT ELECTIONS TO THE EUROPEAN PARLIAMENT, WITHOUT WAITING FOR THE FRG TO INITIATE THE LONG-PROMISED CONSULTATION WITH THE ALLIES ON THIS MATTER. THE TRIPARTITE REPS IDENTIFIED THREE COMPONENTS TO THE ISSUE -- ELECTION OF REPRESENTATIVES (BOISSIEU THOUGHT IT CLEAR THAT IF BERLINERS CANNOT PARTICIPATE IN ELECTION OF DELEGATES TO THE BUNDESTAG BECAUSE BERLIN CANNOT BE GOVERNED BY THE FRG, ELECTION OF REPRESENTATIVES TO THE EC PARLIAMENT WOULD BE EVEN LESS ACCEPTABLE); VOTING RIGHTS OF BERLINERS IN THE EUROPEAN PARLIAMENT (THOUGH THEY EXERCISE SUCH RIGHTS AT PRESENT, CONTINUING TO DO SO ONCE THE PARLIAMENT OBTAINS BROADER POWERS MAY BE QUESTIONABLE); AND APPLICATION OF DECISIONS OF THE EUROPEAN PARLIAMENT TO BERLIN, ONCE THOSE DECISIONS BEGIN TO TAKE ON THE CHARACTER OF BINDING LEGISLATION.

5. COMMENT. THE FRENCH DRAFT STRIKES US AS A USEFUL INITIATIVE FOR GETTING A BETTER HANDLE ON ONE OF THE POTENTIALLY TROUBLESOME ASPECTS OF THE PROBLEM. AS NOTED IN THE AK LEGAL STUDY (REF D), AMONG THE THOUSANDS OF EC REGULATIONS WHICH HAVE BEEN ROUTINELY APPLIED TO BERLIN SINCE 1957, THERE HAVE BEEN 20 OR SO WHICH -- UNBEKNOWNST TO THE ALLIES -- HAVE GIVEN BINDING EFFECT

TO TREATIES AND AGREEMENTS WITH THIRD STATES. THERE IS NO THOUGHT OF TRYING TO UNDO WHAT HAS BEEN DONE. THE FRENCH AND UK REPS SHARE OUR VIEW THAT IT IS ESSEN-

TIAL FOR THE VIABILITY OF BERLIN THAT IT REMAIN CLOSELY
INTEGRATED WITH THE FRG ECONOMICALLY, AND THAT, TO THAT
END, THERE IS NO ACCEPTABLE ALTERNATIVE TO GIVING FULL
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EFFECT IN BERLIN, WHENEVER POSSIBLE, TO DECISIONS OF
THE COMMUNITY. A BK/L SUCH AS THAT PROPOSED BY THE
FRENCH WOULD, HOWEVER, ASSURE THAT IN THE FUTURE
ALLIED APPROVAL OF THE SORTS OF DECISIONS MOST LIKELY
TO PROVOKE SOVIET PROTESTS WOULD AT LEAST BE GIVEN
WITTINGLY. IT WOULD ALSO PLACE THE BURDEN WHERE WE
BELIEVE IT BELONGS IN ASKING THAT THE GERMANS BRING
SUCH MATTERS TO ALLIED ATTENTION IN A TIMELY FASHION --
MEANING, IN THE CASE OF TREATIES, WHILE THEY ARE STILL
IN THE NEGOTIATING STAGE.

6. AS FOR BROADER ISSUES IN THE EC-BERLIN RELATIONSHIP,
THE USBER/LEGAL COMMITTEE STUDY (REF D) PROVIDES
VALUABLE BACKGROUND AND ANALYSIS. IN ADDITION TO THE
RECOMMENDATIONS CONCERNING TREATIES AND REGULATIONS,
WHICH THE FRENCH ARE NOW TRYING TO MOVE ALONG THROUGH
THEIR DRAFT BK/L, THE COMMENTS ON THE VALUE OF POLITICAL
CONSULTATIONS AND EDUCATION HAVE OBVIOUS MERIT. THE
EMBASSY DISAGREES, HOWEVER, WITH THE IMPLICATIONS OF
THE MAJOR CONCLUSION OF THE USBER/LEGAL COMMITTEE STUDY:
"UNTIL AND UNLESS THE EC BRINGS CLOSER TO REALITY ITS
OBJECTIVE OF EUROPEAN POLITICAL UNION, THE ALLIES
NEED NOT TAKE MAJOR POLICY DECISIONS ON THE EC-BERLIN
RELATIONSHIP." IN OUR VIEW THAT CONCLUSION IS BASED
ON TWO QUESTIONABLE PREMISES -- THAT WE
NEED NOT EXPECT MAJOR DIFFICULTIES FROM THE SOVIETS,
GIVEN THEIR ACCEPTANCE OF THE STATUS QUO IN THE QA

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INFO USMISSION USBERLIN

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(A POSITION WE WOULD EXPECT THE SOVIETS TO DENY WITH INCREASING VEHEMENCE IN THE FUTURE), AND THAT (AS STATED ON PAGE 10 OF REF D), DESPITE THE INCREASING POLITICAL IMPORTANCE OF THE EC, "IT IS STILL ESSENTIALLY AN ECONOMIC ORGANIZATION BY NO MEANS COMPETENT TO EXERCISE SOVEREIGN AUTHORITY."

7. OUR READING IS THAT, WHILE PROGRESS ALONG THE WAY TO EUROPEAN POLITICAL UNION IS STILL HALTING, IT IS NO LONGER ENOUGH SIMPLY TO TELL THE SOVIETS THAT QUESTIONS OF STATUS ARE NOT INVOLVED FOR BERLIN BECAUSE THAT EC GOAL IS STILL PIE IN THE SKY. THE FACT THAT THE EC IS CONCLUDING TREATIES ON BEHALF OF ITS MEMBERS CAN IN ITSELF BE SEEN AS AN EXERCISE OF SOVEREIGN AUTHORITY. THE JULY DECISION OF THE EUROPEAN COUNCIL TO BROADEN
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THE BUDGETARY POWERS OF THE EUROPEAN PARLIAMENT, ALONG WITH EXPECTATIONS OF AN EARLY DECISION ON DIRECT ELECTIONS TO THE PARLIAMENT, ADD URGENCY TO CONSIDERATION OF THE ISSUES RECAPITULATED IN PARA 4, ABOVE. THE FACT THAT EC FOREIGN MINISTERS ARE TO SUBMIT REPORTS BY THE END OF THE YEAR ON A EUROPEAN PASSPORT UNION AND ON MATTERS RELATING TO EUROPEAN CITIZENSHIP WILL PROBABLY ADD WEIGHT, IF NOT SUBSTANCE, TO SOVIET COMPLAINTS ABOUT THE "ILLEGALITY" OF BERLIN'S RELATIONSHIP TO THE EC, AS WILL CONTINUING DISCUSSION OF SUCH LONG-RANGE

OBJECTIVES AS EUROPEAN CURRENCY AND COMMON DEFENSE POLICY. CLOSER COORDINATION OF EC POLITICAL ACTIONS AND DEMONSTRATIVE ACTS SUCH AS AN EC SIGNATURE OF THE CSCE FINAL ACT BELIEVE ASSERTIONS THAT THE EC IS POLITICALLY INSIGNIFICANT. APPLICABILITY OF JUDGMENTS OF THE EC COURT TO BERLIN OR BERLINERS REMAINS TO BE STUDIED.

8. FOR ALL OF THESE REASONS, THE EMBASSY CONSIDERS THAT THE COMPLACENCY WHICH ACCOMPANIED THE ORIGINAL ALLIED DECISION TO EXTEND THE EC TREATIES TO BERLIN IS NO LONGER JUSTIFIABLE. THIS IS NOT TO SUGGEST THAT WE FAVOR OR ANTICIPATE ALLIED POLICY DECISIONS THAT WOULD LESSEN THE PRESENT ROLE OF THE EC IN BERLIN OR UNDULY RESTRICT THE RELATIONSHIP OF THE FUTURE, AT LEAST IN THE ECONOMIC SPHERE. NEITHER OUR RELATIONS WITH THE FRG NOR OUR INTEREST IN THE STABILITY OF BERLIN WOULD PERMIT SUCH A DEVELOPMENT. BUT AS THE EC INCREASINGLY ACQUIRES ATTRIBUTES OF SOVEREIGNTY AND BECOMES MORE ACTIVE IN THE POLITICAL SPHERE, POLICY DECISIONS ARE NEEDED AS TO WHETHER AND HOW ITS ACTIONS ARE TO AFFECT BERLIN. WE PERCEIVE SOME URGENCY IN THINKING THROUGH, TRIPARTITELY AND WITH THE FRG, THE LEGAL AND POLITICAL RATIONALES FOR THOSE DECISIONS. SHOULD WE CONCLUDE AFTER THOROUGH STUDY THAT THERE IS NO WAY, FOR EXAMPLE, TO SQUARE AN ACTIVE ROLE IN THE EUROPEAN PARLIAMENT OF THE FUTURE FOR BERLIN (AND VICE VERSA) WITH THE OBLIGATIONS WE HAVE UNDERTAKEN IN THE QA, IT WOULD BE PREFERABLE TO DECIDE TO LIMIT THAT ROLE AT THE OUTSET, RATHER THAN TO RISK APPEARING TO TAKE RESTRICTIVE MEASURES BECAUSE OF SOVIET PROTESTS. CONFIDENTIAL

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9. WE REALIZE THAT SUCH PROTESTS ARE NOT A FOREGONE CONCLUSION AND THAT THE OPTION IS MOSCOW'S. THERE IS NOTHING INHERENTLY PROVOCATIVE ABOUT BERLIN'S TIES TO THE EC, EITHER NOW OR IN THE FORESEEABLE FUTURE. NONETHELESS, IN A PERIOD WHEN THE FRG IS MAINTAINING A LOW POSTURE ON MATTERS OF FEDERAL PRESENCE IN BERLIN IT IS THE EC TIE WHICH PROVIDES THE HANDIEST TARGET FOR SOVIET EFFORTS TO CHIP AWAY AT THE VIABILITY OF BERLIN AND TO PROMOTE THE "INDEPENDENT ENTITY" CONCEPT. EVEN IF WE ARE OUT OF THE WOODS ON THE EC VOCATIONAL CENTER (AND THE SOVIETS HAVE SAID THEY RESERVE THE RIGHT TO TAKE COUNTERMEASURES), THIS LONG-RANGE SOVIET GOAL COUPLED WITH MOSCOW'S ANTI-PATHY FOR THE EC WOULD SEEM TO MAKE FUTURE CONFRONTATIONS ON EC-RELATED ISSUES ALMOST INEVITABLE. WE WILL THUS CONTINUE TO URGE CONSIDERATION OF THE FULL SPECTRUM OF ISSUES IN THE BONN GROUP IN

COMING MONTHS.

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